No. 241. 38.

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JAMES H. McKENNEY,
Clerk.

Motion to Continue.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1900

Filed April 8, 1901.

MICHAEL W. O'BRIEN, et al, Executors, Etc.,
COMPLAINANTS AND PETITIONERS,
vs.
JOHN G. WHEELOCK, et al,
RESPONDENTS.
No. 241.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MOTION FOR CONTINUANCE.

BENJAMIN HARRISON,
ASA C. MATTHEWS,
THOS. WORTHINGTON,
Counsel for Certain Respondents.

HARRY HIGBEE,
J. OTIS HUMPHREY,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1900

MICHAEL W. O'BRIEN, et al, Executors, Etc.,
COMPLAINANTS AND PETITIONERS,
vs.
JOHN G. WHEELOCK, et al,
RESPONDENTS.
No. 241.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The undersigned counsel, for certain of the respondents, in the above entitled cause, respectfully represent and show unto the court:

FIRST, That they are counsel for some seven hundred of the respondents, as aforesaid, and that in their opinion, and in the opinion of their said clients, they cannot safely proceed to the argument and final trial of this cause at the present term of this court on account of the death of Benjamin Harrison, which occurred at his residence at Indianapolis, Indiana.

on the 13th day of March, 1901. In support of said statement they state the fact to be that when the litigation in the above case was commenced in the Circuit Court of the United States for the Southern District of Illinois, said respondents retained as counsel the Honorable Milton Hay and Henry S. Green, of Springfield, Illinois. That, prior to the argument of the said cause in said Circuit Court of said Southern District said Milton Hay departed this life; that at the argument of said cause in said Circuit Court,, the principal argument was made on the part of the respondents by Henry S. Green. that said cause, on the hearing, was decided in favor of these respondents, and a decree entered dismissing the bill of complainants—petitioners herein. That the petitioners prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and that said appeal was argued in said Court on the 7th day of June, 1898, on behalf of respondents aforesaid, by said Benjamin Harrison and Henry S. Green, assisted by Thomas Worthington. That since the argument of said cause in the said United States Circuit Court of Appeals, said Henry S. Green has died. That since the death of said Henry S. Green, the respondents herein being owners of the land in question, employed said Benjamin Harrison to prepare a brief for the argument of the said cause in this Court, and to make the principal oral argument on the hearing thereof. That said Benjamin Harrison undertook the service, and was paid and received a retainer therefor, and had his brief partly prepared at the time of his death, but not fully completed, and counsel aver that it embraced only one proposition of defense herein.

Said counsel state that the amount involved in this case, as claimed by petitioners, is something over eight hundred thousand dollars ($800,000); that petitioners claim that said amount is a valid, subsisting, equitable lien on one hundred and ten thousand (110,000) acres of land locaetd in the counties of Adams, Pike and Calhoun, in the state of Illinois. That this cause, and the questions involved therein, are of great importance, involving, among other things grave constitutional questisns, and the record, as will appear from inspection, is exceedingly voluminous. They aver that said Milton Hay, Henry S. Green and Benjaman Harrison were all attorneys of great ability and wide reputation, and have been employed on account of their great experience and high standing as members of the bar.

Counsel aver that while they themselves have been connected with the case from its commencement, up to and including the present time, yet since the employment of Benjaman Harrison, as aforesaid, they have relied upon him to make the oral argument in the case before this court. Counsel further state that in view of the gravity of the question, and being land owners as well as counsel in the case, it is their urgent desire that other counsel be employed in place of Benjaman Harrison to conduct the oral argument for the defence, upon the hearing of this case in this Court.

They further aver that as soon as possible after the death of the said Benjamin Harrison, they conferred with representaatives of their numerous clients, and it was determined by the conference that additional counsel be retained to take the place

of the said Benjamin Harrison in the argument of this cause. They further state that in view of the short time intervening before this case is set for hearing, the importance of the question imvolved, and the extent of the record, it would be impossible for counsel not already familiar with the case to prepare for argument thereof at the present term of this Court, and that unless a continuane be granted, it would be impossible for them to secure the service of such additional counsel.

Counsel further state that in view of the embarrasing situation of the respondents, consequent upon the facts aforesaid, and for the purpose of avoiding a continuance if possible, they, on the 18th day of March, 1901, wired Mr. Henry M. Duffield, counsel for petitioners, a proposal that the cause be submitted without oral argument on printed briefs and arguments, but that this proposition was declined by Mr. Duffield.

They further state that they are anxious that this cause shall be tried, and the rights of the parties fully determined at the earliest possible day. That during the whole of this long litigation, this is the first time they have made an application for continuance, or any kind of delay, and that, should this cause be continued, they expect to proceed to trial at the next term of this Court. They further state that this application is not made for delay, but for the purpose of properly presenting this case to this Court, that justice may be done.

WHEREFORE, They pray, in consideration of the premises, that a continuance of this cause may be granted to the next term of this Court.

A. C. MATTHEWS,
HARRY HIGBEE,
Counsel for Respondents.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1900

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF ILLINOIS, } ss.
COUNTY OF PIKE,

MICHAEL W. O'BRIEN, et al, Executors, Etc.,
COMPLAINANTS AND PETITIONERS,
vs. } No. 241.
JOHN G. WHEELOCK, et al,
RESPONDENTS.

A. V. Wills, being duly sworn, on his oath says that he is one of the respondents in the above entitled cause. That he is the owner of lands located in the said Levee Drainage District, and that he has read the petition and motion for a continuance herein, and that the same is true to deponent's knowledge, information and belief, and deponent's knowledge is derived from the fact that he has been connected with the said Levee Drain-

age District and the lands located therein, and with all matters connected with this litigation, since the commencement and during the progress thereof.

A. V. WILLS.

Subscribed and sworn to before me, this 2nd day of April, A. D., 1901.

HELEN M. ADAMS,

[SEAL.] Notary Public.

MICHAEL W. O'BRIEN, et al, Executors, Etc.,
COMPLAINANTS AND PETITIONERS,
vs.
JOHN G. WHEELOCK, et al,
RESPONDENTS.
No. 241.

To GENERAL HENRY M. DUFFIELD, COUNSEL FOR PETITIONERS, IN THE SUPREME COURT OF THE UNITED STATES, IN THE ABOVE ENTITLED CAUSE:

SIR:

Take notice that a motion for a continuance in the above entitled cause, of which the foregoing is a true copy, will be filed in the office of the Supreme Court of the United States on Monday, the 8th day of April, A. D., 1901, by counsel for Respondents, at the opening of the Court on said day; on which day said motion will be called for hearing in said Court, or as soon thereafter as counsel can be heard.

A. C. MATTHEWS,
HARRY HIGBEE,
Counsel for Respondents.